

**U.S. Department of the Interior
Bureau of Land Management
Royal Gorge Field Office
3028 E. Main Street
Canon City, CO 81212**

CATEGORICAL EXCLUSION

NUMBER: DOI-BLM-CO-200-2013-0036 CX

CASEFILE/PROJECT NUMBER: COC-076045

PROJECT NAME: Birdseye Gulch Water Storage Feasibility Study

PLANNING UNIT: Arkansas River Sub-region #1

LEGAL DESCRIPTION: Lake County: 6th PM, T.8S., R.79W., sec. 33, NW¼SE¼.

APPLICANT: Lake County Board of County Commissioners (Agent: Michael Conlin, PE)

DESCRIPTION OF PROPOSED ACTION

The applicant is seeking a 2920 Minimum Impact Permit to conduct geotechnical and hydrologic investigations and other engineering studies over a three year period of an abandoned gravel pit near Birdseye Gulch. The site is in Lake County approximately five miles north of Leadville. (see Map 1, General Location).

Access to the site is from a gravel road that connects with Highway 91 approximately ¼ mile from the subject area. Highway 91 and the East Fork of the Arkansas River both run west of the subject area. Birdseye Gulch is located directly south of the subject area, through which Birdseye Creek flows. (See Figure 1, Proposed Project Area)

The purpose of the investigations and studies would be to determine:

- the preliminary feasibility of constructing a water storage vessel in that location;
- the physical ability to divert water from Birdseye Creek to fill the reservoir for storage; and
- the ability to release water back to Birdseye Creek to support Lake County's 98CW173 Plan for Augmentation and its 11CW86 Application for Conditional Water Storage Rights.

If the site proves suitable, engineering studies would be completed and the applicant will apply for authorization under 43CFR2800 to construct, operate and maintain a water storage facility consisting of road access, a water control structure, a release ditch, and a diversion structure. (See Figure 1, Proposed Project Area)

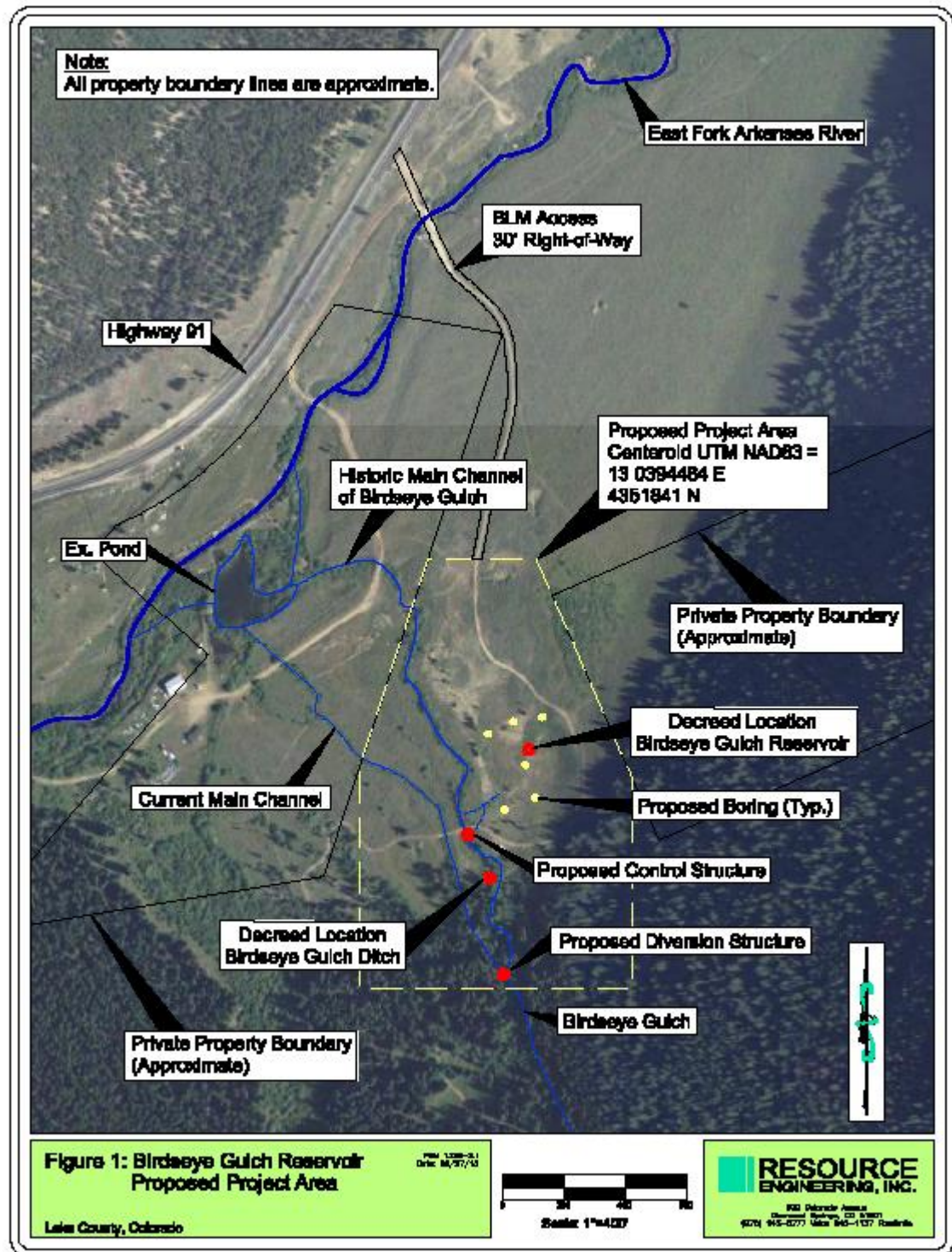
The proposed geotechnical activities would result in minor and limited ground disturbance that exceeds the BLM definition of "casual use" but would be expected to fall within the parameters of "minimum impact." The proposed activities include:

- accessing the site from Highway 91 using an existing unimproved residential access road;
- drive a truck-mounted 4" continuous flight auger on mainly over existing road and previously disturbed areas, but may also require driving over a small amount of upland vegetation at some test locations;

Map 1: Location of Birdseye Gulch



Figure 1: Birdseye Gulch Proposed Project Area and Features.



- drilling approximately five test borings to a typical depth of 15 to 25 feet, though some deeper holes may be required to reach bedrock (note: specific locations for test boring have not been identified at this time, but Lake County would submit them to BLM for approval prior to drilling);
- taking sub-soil samples using a 1 3/8" I.D. spoon sampler driven to various depths by a 140 pound hammer falling 30 inches.

The proposed hydrological activities also exceed the BLM definition of casual use but would be expected to fall within the parameters of "minimum impact." In order to establish the native flow regime, the applicant proposes to install a Parshall Flume (or equivalent flow measuring device) in the active channel of Birdseye Gulch at the location of the proposed diversion structure (see Figures 1 and 2). Applicant is working with the Army Corps of Engineers to determine if a Nationwide Permit #5 is required under Section 404 of the Clean Water Act. Access to the site for excavation and installation of the device would be via an existing primitive road.

The applicant has proposed to minimize impacts to the human environment by including the following design features:

- No interruption of public use of the road or area;
- The area of disturbance from drilling and sampling would be limited to the spoils deposition area;
- Spoils would be backfilled, the area re-graded to pre-construction condition, and then reseeded;
- No fuel would be stored on site;
- Staging areas, if needed, would be located on upland soils within or to the north of the abandoned gravel pit to avoid impacting active or inactive stream channels or associated riparian wetlands (Note: applicant states there are no wetlands in the subject area);
- Industry standards will be employed to suppress any fugitive dust that may arise from vehicles and drilling equipment;
- Drilling activities will be conducted in the excavated area below line of sight of the highway and remote from residential or commercial uses, which should limit visual and noise impacts.
- If the site proves unfeasible for water storage, the flume will be removed and the channel will be returned to pre-construction condition to the greatest extent possible. If the site is feasible, the proponent will include the flume as part of the SF-299 application for a water storage facility.

The BLM issued two non-exclusive rights-of-way (ROW) within the subject area. The first is a 30-foot wide access road to an adjacent private property (COC-065179). The second is a 20-foot wide ROW for an underground electric power line that runs alongside the road to provide service to that same property (COC-71477). A permanent residential structure has not yet been constructed on the private parcel; the owners park a recreational vehicle on their property for seasonal occupancy.

PLAN CONFORMANCE REVIEW:

Name of Plan: Royal Gorge Resource Management Plan

Date Approved: May 13, 1996

Decision Number: C-135

Decision Language: Complete, as needed, land acquisition of desirable waterpower/storage sites.

CATEGORICAL EXCLUSION REVIEW: This proposed action is listed as a Categorical Exclusion in BLM Handbook H-1790-1, Appendix 4 E.19: *Issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition.*

None of the following exceptions in 516 DM 2, Appendix 2, apply.

Exclusion Criteria	YES	NO
1. Have significant impacts on public health or safety.		X
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; lands with wilderness characteristics; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas.		X
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources.		X
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		X
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.		X
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		X
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		X
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		X
9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		X
10. Have a disproportionately high and adverse effect on low income or minority populations.		X
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites.		X
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species.		X

INTERDISCIPLINARY TEAM REVIEW			
NAME	TITLE	AREA OF RESPONSIBILITY	Initials/date
Matt Rustand	Wildlife Biologist	Terrestrial Wildlife, T&E, Migratory Birds	MR, 3/4/2013
Jeff Williams	Range Management Spec.	Range, Vegetation, Farmland	JW, 3/26/13
Chris Cloninger	Range Management Spec.	Range, Vegetation, Farmland	N/A
John Lamman	Range Management Spec.	Weeds	JL, 02/27/2013
Dave Gilbert	Fisheries Biologist	Aquatic Wildlife, Riparian/Wetlands	DG, 03/01/2013
Stephanie Carter	Geologist	Minerals, Paleontology, Waste Hazardous or Solid	SSC, 3/15/2013
Melissa Smeins	Geologist	Minerals, Paleontology	N/A
John Smeins	Hydrologist	Hydrology, Water Quality/Rights, Soils	JS, 2/27/2013
Ty Webb	Prescribed Fire Specialist	Air Quality	TW, 3/7/2013
Jeff Covington	Cadastral Surveyor	Cadastral Survey	JC, 2/27/2013
Kalem Lenard	Outdoor Recreation Planner	Recreation, Wilderness, LWCs, Visual, ACEC, W&S Rivers,	KL, 2/28/2013
John Nahomenuk	River Manager	Recreation, Wilderness, LWCs, Visual, ACEC, W&S Rivers	
Ken Reed	Forester	Forestry	KR, 2/27/13
Martin Weimer	NEPA Coordinator	Environmental Justice, Noise, SocioEconomics	mw, 3/1/13
Monica Weimer	Archaeologist	Cultural, Native American	MMW, 7/2/13
Vera Matthews	Realty Specialist	Realty	N/A
Steve Craddock	Realty Specialist	Realty	SRC, 2/25/2013
Steve Cunningham	Law Enforcement Ranger	Law Enforcement	SC, 3/1/2013

REMARKS (Determination of Minimum Impact per 2920 Permit Criteria):

Cultural Resources: Although cultural resources were found near the area of potential effect [see report CR-RG-135 (P)], no sites determined to be eligible for the National Register of Historic Places (NRHP) are present in the area of potential effect. Therefore, the proposed project will have no impact on any historic properties (those eligible for the NRHP).

Native American Religious Concerns: No possible traditional cultural properties were located during the cultural resources inventory (see above). There is no other known evidence that suggests the project area holds special significance for Native Americans.

Threatened and Endangered Species: By proximity, this action is approximately one mile from the only known breeding site in Lake County for boreal toads. Boreal toads have experienced regional and statewide decline and historic populations located in Lake County are otherwise extirpated based upon recent biological survey. The boreal toad is a BLM Sensitive Species and

has been petitioned for listing under the Endangered Species Act by various groups. This action, if work is completed when the project area is dry, (recommend avoidance during the May-June snowmelt period of mud conditions{average precipitation years}) would have no impacts substantially different than use by the general public while camping, driving, and recreating in the Birdseye watershed. It should be noted however that this species listing status is under review and listing determination is uncertain. Outcome of this planned study, potentially resulting in the proposal of creating of a water-body, may invoke involvement of the Fish and Wildlife service under consultation procedures. Otherwise, flow measurement and soil core work on dry uplands would not affect runoff siltation rates into the downstream fishery or impact the upstream locations where toads presently occupy. Work could proceed without mitigation except the recommendation to not work when the area is wet.

The Canada lynx is a federally listed threatened species, and the action area does occur within a Lynx Analysis Unit (Tennessee Pass). The action area occurs within lynx winter habitat. However, due to the negligible occupation and site disturbance of the action area, the proposed action will have no impact on Canada lynx or Canada lynx habitat. The outcome of the planned study may lead to the creation of a water body with a large disturbance footprint. This future action would result in a loss of lynx habitat, triggering Endangered Species Act Section 7 consultation with the United States Fish and Wildlife Service prior to approval.

Migratory Birds: To be in compliance with the Migratory Bird Treaty Act (MBTA) and the Memorandum of Understanding between BLM and USFWS required by Executive Order 13186, BLM must avoid actions, where possible, that result in a “take” of migratory birds. Pursuant to BLM Instruction Memorandum 2008-050, to reduce impacts to Birds of Conservation Concern (BCC), no habitat disturbance (removal of vegetation such as timber, brush, or grass) is allowed during the periods of May 15 - July 15, during the breeding and brood rearing season for most Colorado migratory birds. An exception to this timing limitation will be granted if nesting surveys conducted no more than one week prior to vegetation-disturbing activities indicate no nesting within 30 meters (100 feet) of the area to be disturbed. Surveys shall be conducted by a qualified breeding bird surveyor between sunrise and 10:00 a.m. under favorable conditions.

If vegetation was cleared prior to May 15, this provision does not apply to ongoing construction or completion activities that are initiated prior to May 15 and continue into the 60-day period.

Minerals: Minerals within the proposed project area are open to entry under the mining law and are open to development under regulations codified at 43 CFR 3809. As of March 2013, an active lode claim is located within the boundary of the proposed project. If work on active claims is required, Lake County will need to contact the claimant regarding potentially restricted access, disturbance to the mineral resource and/or mining operations and reclamation of disturbed areas.

Wastes, Solid or Hazardous: It is assumed that conditions associated with the proposed project site are currently clean and that no contamination is evident. If evidence of legacy mining activities exists, this needs to be documented to determine baseline conditions. No hazardous material, as defined by 42 U.S.C. 9601 (which includes materials regulated under CERCLA, RCRA and the Atomic Energy Act, but does not include petroleum or natural gas), will be used, produced, transported or stored during project implementation. A determination will be made by

the operator prior to initiating the project, if there is evidence that demonstrates otherwise (such as solid or hazardous substances having been previously used, stored, or disposed of at the project site.

If this project involves some type of oil or fuel use, transfer and/or storage, an adequate spill kit is required to be onsite. The project proponent will be responsible for adhering to all applicable local, State and Federal regulations in the event of a spill, which includes following the proper notification procedures in BLM's Spill Contingency Plan.

Nothing in the analysis or approval of this action by BLM authorizes or in any way permits a release or threat of a release of hazardous materials (as defined under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations) into the environment that will require a response action or result in the incurrence of response costs.

COMPLIANCE PLAN (optional):

NAME OF PREPARER: Steve Craddock, Realty Specialist, RGFO

SUPERVISORY REVIEW: Jay Raiford, AFM, Non-Renewable, RGFO

NAME OF ENVIRONMENTAL COORDINATOR: /s/ Martin Weimer

DATE: 8/12/13

DECISION AND RATIONALE: I have reviewed this Categorical Exclusion and have decided to implement the Proposed Action.

This action is listed in the Department Manual as an action that may be categorically excluded. I have evaluated the action relative to the 10 criteria listed above and have determined that it does not represent an exception and is, therefore, categorically excluded from further environmental analysis.

SIGNATURE OF AUTHORIZED OFFICIAL: /s/ Keith E. Berger
Keith E. Berger, Field Manager

DATE SIGNED: 8/13/13